

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MOISES PEREZ,

Plaintiff,

v.

BODEGA LATINA CORPORATION D/B/A
EL SUPER,

Defendant.

§
§
§
§
§
§
§
§
§
§

CASE NO. 3:19-cv-00360

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, *et seq.*, Defendant Bodega Latina Corporation (sued as Bodega Latina Corporation d/b/a El Super) (“Bodega”) files this Notice of Removal of this action from State Court to this Court and respectfully states as follows:

1. On October 17, 2019, Plaintiff, Moises Perez (“Plaintiff”), commenced a civil action in the District Court of El Paso County, Texas (“the State Court”), bearing the style, *Moises Perez v. Bodega Latina Corporation d/b/a El Super*, Cause No. 2019-DCV-4034017-303418-18 (“the Civil Action”). The Civil Action is still pending in the State Court.

2. Bodega was served with a copy of the Summons and Petition in the Civil Action on November 18, 2019, copies of which are attached as **Exhibit A**, and which constitute all process, pleadings, and orders served on Bodega in the Civil Action to date.

3. Bodega has, to date, made no appearance in the Civil Action in State Court.

4. The Civil Action is one of which this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and removal jurisdiction pursuant to 28 U.S.C. § 1441 in that:

- a. The Petition asserts a claim to recover damages for a violation of the Family and Medical Leave Act (“FMLA”), codified in 29 U.S.C. § 2601, *et seq.*
- b. This Court has original jurisdiction of Plaintiff’s FMLA claim under the civil enforcement provisions of the FMLA, 29 U.S.C. § 2617(a)(2).

5. The Civil Action is also one of which this Court has jurisdiction pursuant to 28 U.S.C. § 1332 and removal jurisdiction pursuant to 28 U.S.C. § 1441 in that:

- a. Plaintiff, both at the time of filing of the Civil Action and as of the date of filing this Notice, was and is a citizen of the State of Texas. (*See* Plaintiff’s Petition attached as **Exhibit A**, ¶ 2.)
- b. Bodega, both at the time of the filing of the Civil Action and as of the date of filing of this Notice, was and is a corporation incorporated under the laws of the State of Delaware with its principal place of business in the State of California. As such, Bodega is a foreign corporation to Texas. (*See* Plaintiff’s Petition attached as **Exhibit A**, ¶ 3.)
- c. Complete diversity exists between all parties properly joined in the civil action in that the civil action is between citizens of different States.
- d. Additionally, the Petition alleges that Plaintiff seeks recovery of more than \$200,000. (*See* Plaintiff’s Petition attached as **Exhibit A**, ¶ 31.) Accordingly, the amount in controversy exceeds \$75,000, exclusive of interest and costs, as required for diversity jurisdiction.
- e. This action is within the original jurisdiction of the Court pursuant to the provisions of 28 U.S.C. § 1332.

6. Bodega has filed this Notice prior to the expiration of thirty (30) days following its receipt of a copy of the Petition.

7. The judicial district and division of this Court encompasses El Paso County, Texas, the place where the Civil Action is pending.

8. Bodega will give written notice to Plaintiff and will file a Notice of Filing of Notice of Removal with the Clerk of the District Court of El Paso County, Texas. Bodega attaches a copy of the Notice of Filing of Notice of Removal as **Exhibit B**.

WHEREFORE, Defendant Bodega Latina Corporation prays that the Civil Action now pending against it in the District Court of El Paso County, Texas be removed therefrom to this Court.

Dated: December 6, 2019

Respectfully submitted,

By: /s/Kurt Greve

Kurt W. Greve

Texas Bar No. 24007275

LATHROP GAGE LLP

2101 Cedar Springs Road, Suite 1400

Dallas, Texas 75201

Phone: (214) 983-6030

Facsimile: (214) 983-6101

Email: sgarcia@lathropgage.com

*Attorney for Defendant Bodega Latina
Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December 2019, a copy of the above pleading was served via the District Court ECM/ECF system, and by first class United States mail, postage prepaid, on the following counsel of record:

Enrique Chavez, Jr.
Michael R. Anderson
2101 N. Stanton Street
El Paso, TX 79902
Email: enriquechavezjr@chavezlawpc.com

Attorneys for Plaintiff

/s/Kurt Greve

Kurt W. Greve